IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

CMA.No. 20 of 2003()

AGAINST THE ORDER DATED 29-5-2002 IN IA.628/2001 INAS.53/1999 of SUB COURT, NEDUMANGAD

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APPELLANT: PETITIONERS-APPELLANTS:

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1. KAMALAKSHI THAMARAKSHI,
CHARUVILA VEEDU, KOTTAPPARA,CHEKKAKONATHU MURI,
KARAKULAM VILLAGE NOW RESIDING AT THOPPIL
THADATHARIKATHU VEEDU.

2. CHELLAPPAN NADAR KRISHNAN NADAR,
CHARUVILA VEEDU, KOTTAPPARA, CHEKKAKONATHU MURI,
KARAKULAM VILLAGE NOW RESIDING AT THOPPIL
THADATHARIKATHU VEEDU.

BY ADV. SRI.M.SREEKUMAR

RESPONDENTS: COUNTER PETITIONERS - DEFENDANTS:

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1. VELAYUDHAN NADAR SASI,
THOPPIL CHARUVILA VEEDU, KOTTAPPARA,
CHEKKAKONATHU MURI, KARAKULAM VILLAGE.

2. KOMALAM, W/O. VELAYUDHAN NADAR SASI,
THOPPIL CHARUVILA VEEDU, KOTTAPPARA,
CHEKKAKONATHU MURI, KARAKULAM VILLAGE.

3. PANKAJAKSHI VASANTHA,
PLAVILA OUTHUVAL PUTHEN VEEDU,
CHEKKAKONATHU MURI, KARAKULAM VILLAGE.

4. PONNUMUTHAN NADAR MOHANAN,
PLAVILA PUTHUVAL PUTHEN VEEDU,
CHEKKAKONATHU MURI, KARAKULAM VILLAGE.

THIS CIVIL MISC. APPEAL HAVING BEEN FINALLY HEARD ON 12/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR J.

C.M.A No.20 of 2003

Dated this the 12th day of June 2007

JUDGMENT

The appellants in A.S. No. 53/1999 on the file of Subordinate Judge's Court, Nedumangad are the appellants. The appellants filed O.S. 151/1995 before the Principal Munsiff's Court, Nedumangad for declaration of title and recovery of possession against the respondents . The suit was dismissed.

2. Challenging the judgment & decree passed in O.S. 151/1995 the appellants filed A.S. No. 53/1999 and that appeal was pending before the Subordinate Judge's Court Nedumangad . When the appeal came up for hearing appellant and counsel were absent. The Lower Appellate Court dismissed the appeal for default. The appellants filed I.A. No. 598/1999 for re-admission of the appeal That application was dismissed on 24-1-2000 for default. Appellants filed I.A. No. 241/2000 for restoration of I.A.No. 598/1999. . That application was allowed on condition that the appellants pay a cost of Rs. 300/- on 23-2-2001. Cost was not paid within the stipulated period and again I.A. 598/1999 was dismissed. On 10-4-2001 the appellants paid the cost and filed I.A. No. 291/2001 for restoration of I.A. No.598/1999.. That application was allowed on further payment of cost of Rs. 300/- to the Legal Services Committee. The cost

was paid and I.A. No. 598/1999 has restored to file. Thereafter I.A. No. 598/1999 was allowed and the appeal was ordered to be taken back to file on payment of a cost of Rs. 500/- to respondents 2 and 3 on or before 21-8-2001. But the appellants did not pay the cost and I.A. No. 598/1999 was dismissed for a third time. Appellant filed I.A. No. 628/2001 for readmission of the appeal. That application was dismissed. Challenging that order this C.M.A is filed.

3. It is an admitted fact that A.S 53/1999 was dismissed for default. It is also an admitted fact that the appellants filed I.A 558/1999 for readmission of the appeal. Initially that application was dismissed for default. The appellants filed I.A. No. 241/2000 for restoration of I.A. No. 598/1999 . That was allowed on condition that the appellants pay a cost of Rs. 300/-. Initially cost was not paid. So I.A 241/2000 was dismissed. But subsequently I.A. No. 291/2001 was filed. That application was allowed and I.A No. 598/99 was restored to file, subsequently the application for readmission of the appeal was allowed on condition that appellants pay a cost of Rs. 500/- to respondents 2 & 3 on or before 21-8-2001. Since there was failure to comply with the condition, that application was dismissed. Instead of filing petition for extending and enlarging the time for payment of cost the appellants filed I.A. No. 628/2001 for readmission of the appeal. In view of the dismissal of I.A. No. 598/1999 a third

application filed for the same purpose is not maintainable. So the dismissal of I.A. No. 628/2001 is correct and does not call for any interference.

4. Learned counsel for the appellants submitted that the defect is only a technical one and I.A. No. 628/2001 may be treated as a petition for extending and enlarging the time fixed for payment of cost in I.A No. 598/1999. I do not think that I will be justified in going out of the pleadings granting such reliefs, especially In view of the fact that the respondents have not chosen to appear for contesting in this C.M.Appeal. I make it clear that it is open to the appellants move the trail court if such a petition is maintainable . This order will not be a bar for the appellants to take recourse to any such remedies available to them.

In the result the appeal is dismissed. But I make it clear that the dismissal of the appeal will not be a bar for the appellants to take recourse to any other remedy available to them, if the same is permissible under law.

K.PADMANABHAN NAIR,JUDGE

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